

Environmental Protection Agency

§ 80.315

the actual average sulfur level, calculated in accordance with the provisions of § 80.205, for gasoline produced during the averaging period at the refinery that was imported into the U.S., in accordance with the requirements of § 80.410, exclusive of any credits.)

(b) The refiner may include any oxygenates included in its RFG or conventional gasoline volume under §§ 80.65 and 80.101(d)(4), respectively, for the purpose of generating credits.

(c) Credits under this program are in units of "ppm-gallons".

(d) Refiners may generate credits for gasoline produced during an averaging period for a refinery only if the annual average sulfur level for the gasoline produced at that refinery during the averaging period is less than 0.90 of the refinery's baseline under § 80.250 or § 80.295.

(e) Credits generated in accordance with paragraph (a) of this section must be identified by the year of creation.

(f) For gasoline produced during the year 2000, the averaging period for credits generated in accordance with paragraph (a) of this section may be less than the full calendar year. Such partial-year averaging period will begin with the first full month for which all applicable sampling, testing, and documentation requirements are met.

[65 FR 6823, Feb. 10, 2000, as amended at 66 FR 19308, Apr. 13, 2001; 67 FR 40183, June 12, 2002]

§ 80.310 How are credits generated beginning in 2004?

(a) A refiner for any refinery, or an importer, may generate credits in 2004 and thereafter if the annual average sulfur level for gasoline produced or imported for the averaging period is less than the applicable refinery or importer annual average sulfur standard for that refinery or importer in that year.

(b) Credits are calculated as follows:

$$CR_a = V_a \times (S_{Std} - S_a)$$

Where:

CR_a = Credits generated for the averaging period.

V_a = Total annual volume gasoline produced at a refinery or imported during the averaging period.

S_{Std} = 30 ppm; or the sulfur standard for a small refinery established under § 80.240; or, for gasoline designated as GPA gasoline under § 80.219, the standard for GPA gasoline established for a refinery under § 80.216(a).

S_a = Actual annual average sulfur level, calculated in accordance with the provisions of § 80.205, for gasoline produced at a refinery or imported during the averaging period, exclusive of any credits.

(c) Credits generated in accordance with this section must be identified by the year of creation.

[65 FR 6823, Feb. 10, 2000, as amended at 66 FR 19308, Apr. 13, 2001; 67 FR 40184, June 12, 2002]

ABT PROGRAM—CREDIT USE

§ 80.315 How are credits used and what are the limitations on credit use?

(a) *Credit use.* Credits may be used to meet the applicable refinery or importer annual average sulfur standards under § 80.195, § 80.216, or § 80.240, or may be used to meet the offset requirement under § 80.271(d)(1) for any refinery with an adjustment of its per-gallon cap standard pursuant to § 80.271(a), provided that:

(1) Sulfur credits used were generated pursuant to the requirements of this subpart; and

(2) The requirements of paragraphs (b) and (c) of this section are met.

(b) *Credit transfers.* (1) Credits obtained from other persons may be used to meet the annual average standards specified in § 80.195, § 80.216, or § 80.240, or may be used to meet the offset requirement under § 80.271(d)(1) for any refinery with an adjustment of its per-gallon cap standard pursuant to § 80.271(a), if all the following conditions are met:

(i) The credits are generated and reported according to the requirements of this subpart.

(ii) The credits are used in compliance with the limitations regarding the appropriate periods for credit use in this subpart.

(iii) Any credit transfer takes place no later than the last day of February following the calendar year averaging period when the credits are used.

(iv) No credit may be transferred more than twice: The first transfer by

the refiner or importer who generated the credit may only be made to a refiner or importer who intends to use the credit; if the transferee cannot use the credit, it may make the second, and final, transfer only to a refiner or importer who intends to use the credit. In no case may a credit be transferred more than twice before being used or terminated.

(v) The credit transferor must apply any credits necessary to meet the transferor's applicable average standard before transferring credits to any other refiner or importer.

(vi) No credits may be transferred that would result in the transferor having a negative credit balance.

(vii) Each transferor must supply to the transferee records indicating the years the credits were generated, the identity of the refiner or importer who generated the credits, and the identity of the transferring party, if it is not the same party that generated the credits.

(2) In the case of credits that have been calculated or created improperly, or are otherwise determined to be invalid, the following provisions apply:

(i) Where a refiner's baseline has been determined to be incorrect under § 80.250(c) or § 80.290(f), any credits generated, banked, used or traded must be adjusted to reflect the corrected baseline.

(ii) Invalid credits cannot be used to achieve compliance with the transferee's averaging standard, regardless of the transferee's good faith belief that the credits were valid.

(iii) The refiner or importer who used the credits, and any transferor of the credits, must adjust their credit records and reports and sulfur calculations as necessary to reflect the proper credits.

(iv) Any properly created credits existing in the transferor's credit balance after correcting the credit balance, and after the transferor applies credits as needed to meet the average standard at the end of the compliance year, must first be applied to correct the invalid transfers before the transferor trades or banks the credits.

(c) *Limitations on credit use.* (1) Credits generated prior to 2004 may only be used for demonstrating compliance

with the refinery or importer annual average standards under § 80.195 during the 2005 and 2006 averaging periods. Such credits may be used to demonstrate compliance with the standards under § 80.216 during the 2004 through 2006 averaging periods, and with the standards under § 80.240 during the 2004 through 2007 averaging periods, and the 2008 and 2009 averaging periods, if allowed under the terms of a hardship extension under § 80.265.

(2) Credits generated in 2004 or later may only be used for demonstrating compliance with standards during an averaging period within five years of the year of generation.

(3) A refiner or importer possessing credits must use all credits prior to falling into compliance deficit under § 80.205(e).

(4) Credits may not be used to meet corporate pool average standards under § 80.195.

[65 FR 6823, Feb. 10, 2000, as amended at 67 FR 40184, June 12, 2002]

§§ 80.320—80.325 [Reserved]

SAMPLING, TESTING AND RETENTION REQUIREMENTS FOR REFINERS AND IMPORTERS

§ 80.330 What are the sampling and testing requirements for refiners and importers?

(a) *Sample and test each batch of gasoline.* (1) Refiners and importers shall collect a representative sample from each batch of gasoline produced or imported and test each sample to determine its sulfur content for compliance with requirements under this subpart prior to the gasoline leaving the refinery or import facility, using the sampling and testing methods provided in this section.

(2) Except as provided in paragraph (a)(3) of this section, the requirements of this section apply beginning January 1, 2004, or January 1 of the first year of allotment or credit generation under § 80.275 or § 80.305, whichever is earlier.

(3) Prior to January 1, 2004:

(i) Any refiner may release gasoline from the refinery prior to obtaining the test results required under paragraph (a)(1) of this section.